



Atty. Dkt. No. 080494-0141

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Smithbaker et al.

Title: MULTI-STEP LOCKING EYE
CUP TWIST UP DEVICE

Appl. No.: 10/629,241

Filing Date: 07/29/2003

Examiner: Ben, Loha

Art Unit: 2873

Conf. No.: 6602

<u>CERTIFICATE OF EXPRESS MAILING</u>	
I hereby certify that this correspondence is being deposited with the United States Postal Service's "Express Mail Post Office To Addressee" service under 37 C.F.R. § 1.10 on the date indicated below and is addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.	
EV 962270767 US (Express Mail Label Number)	4/5/07 (Date of Deposit)
Carolyn Simpson (Printed Name)	
(Signature)	

INFORMATION DISCLOSURE STATEMENT
UNDER 37 CFR §1.56

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Submitted herewith on Form PTO/SB/08 is a listing of a document known to Applicants in order to comply with Applicants' duty of disclosure pursuant to 37 CFR §1.56.

This case was recently transferred from another firm to the undersigned counsel.

Accordingly, Japanese Utility Model Registration number 3090513 submitted herewith has just recently come to our attention. While Applicants submit the Utility Model Registration to ensure compliance with 37 C.F.R. § 1.56, Applicants do not believe that the Japanese Utility Model Registration is available as a prior art reference against the present application. Under Japan's Utility Model Law of 1993, an application is granted a utility model registration without a substantive examination. However, before the owner of a Utility Model can enforce its legal rights, the owner must obtain a "registrability report," which is, in essence, an examination on the

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merits stating that the claim of legal rights in the Utility Model is valid. Thus, the Utility Model registration itself is not enforceable until one obtains an examination, a “registrability report.” Because the Utility Model is not enforceable at the date of registration, the Utility Model Registration is not a “patent” or “patented” for the purposes of 35 U.S.C. § 102(d). See MPEP § 2135.01, The Four Requirements of 35 U.S.C. 102(d) (stating that ‘Patented’ means ‘a formal bestowal of patent rights from the sovereign to the applicant’ and quoting *In re Monks*, 588 F.2d 308, 310, 200 USPQ 129, 131 (CCPA 1978)).

A copy of each non-U.S. patent document and each non-patent document is being submitted to comply with the provisions of 37 CFR §1.97 and §1.98.

The submission of any document herewith, which is not a statutory bar, is not intended as an admission that such document constitutes prior art against the claims of the present application or that such document is considered material to patentability as defined in 37 CFR §1.56(b). Applicants do not waive any rights to take any action which would be appropriate to antedate or otherwise remove as a competent reference any document which is determined to be a *prima facie* art reference against the claims of the present application.

TIMING OF THE DISCLOSURE

The listed document is being submitted in compliance with 37 CFR §1.97(c), before the mailing date of either a final action under 37 CFR §1.113, a notice of allowance under 37 CFR §1.311, or an action that otherwise closes prosecution in the application.

RELEVANCE OF EACH DOCUMENT

The relevance of the foreign-language document is described in the English translation of the application for a utility model registration. An English translation of the foreign-language document is not readily available. However, the absence of such translation does not relieve the PTO from its duty to consider the submitted foreign language document (37 CFR §1.98 and MPEP §609).

Applicants respectfully request that each listed document be considered by the Examiner and be made of record in the present application and that an initialed copy of Form PTO/SB/08 be returned in accordance with MPEP §609.

FEE

A credit card payment form in the amount of \$180.00 is enclosed in accordance with 37 CFR §1.17(p) to cover the fee associated with an information disclosure statement under 37 CFR §1.97(c).

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 06-1447. Should no proper payment be enclosed herewith, as by the credit card payment form being unsigned, providing incorrect information resulting in a rejected credit card transaction, or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 06-1447.

Respectfully submitted,

Date 4/5/07

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By 

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Substitute for form 1449/PTO		Complete if Known	
INFORMATION DISCLOSURE STATEMENT BY APPLICANT Date Submitted: April 5, 2007 <i>(Use as many sheets as necessary)</i>		Application Number	10/629,241
		Filing Date	07/29/2003
		First Named Inventor	John Smithbaker
		Art Unit	2873
		Examiner Name	Ben, Loha
		Attorney Docket Number	080494-0141
Sheets	1	of	1

U.S. PATENT DOCUMENTS

UNPUBLISHED U.S. PATENT APPLICATION DOCUMENTS

SEARCHED PATENT AND PUBLICATION DOCUMENTS					
Examiner Initials*	Cite No. ¹	U.S. Patent Application Document	Filing Date of Cited Document MM-DD-YYYY	Name of Patentee or Applicant of Cited Document	Pages, Columns, Lines, Where Relevant Passages or Relevant Figures Appear
		Serial Number-Kind Code ² (if known)			

FOREIGN PATENT DOCUMENTS

FOREIGN PATENT DOCUMENTS						
Examiner Initials*	Cite No. ¹	Foreign Patent Document	Publication Date MM-DD-YYYY	Name of Patentee or Applicant of Cited Documents	Pages, Columns, Lines, Where Relevant Passages or Relevant Figures Appear	T ⁶
		Country Code ³ -Number ⁴ -Kind Code ⁵ (if known)				
	A1	JP 3090513 U	09-25-2002	Smithbaker et al.		X

NON-PATENT LITERATURE DOCUMENTS

Examiner Initials*	Cite No. ¹	Include name of the author (in CAPITAL LETTERS), title of the article (when appropriate), title of the item (book, magazine, journal, serial, symposium, catalog, etc.) date, page(s), volume-issue number(s), publisher, city and/or country where published.	T ⁶

Examiner Signature		Date Considered	
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*EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant. 1 Applicant's unique citation designation number (optional). 2 See Kinds Codes of USPTO Patent Documents at www.uspto.gov or MPEP 901.04. 3 Enter Office that issued the document, by the two-letter code (WIPO Standard ST.3). 4 For Japanese patent documents, the indication of the year of the reign of the Emperor must precede the serial number of the patent document. 5 Kind of document by the appropriate symbols as indicated on the document under WIPO Standard ST.16 if possible. 6 Applicant is to place a check mark here if English language Translation is attached.

This collection of information is required by 37 CFR 1.97 and 1.98. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 (1-800-786-9199) and select option 2.